

MINUTES
LAWTON CITY COUNCIL REGULAR MEETING
FEBRUARY 26, 2013 – 6:00 P.M.
NEW CITY HALL
COUNCIL CHAMBERS/AUDITORIUM

Mayor Fred L. Fitch
Presiding

Also Present:
Bryan Long, Acting City Manager
Frank V. Jensen, City Attorney
Traci Hushbeck, City Clerk

Mayor Fitch called the meeting to order at 6:07 p.m. Notice of meeting and agenda were posted on the City Hall notice board as required by law. Invocation was given by Pastor John Dunaway, Abundant Life Christian Church, followed by the Pledge of Allegiance.

ROLL CALL

PRESENT:

Bill Shoemate, Ward One
Michael Tennis, Ward Two
Rosemary Bellino-Hall, Ward Three
Jay Burk, Ward Four
Richard Zarle, Ward Six
Stanley Haywood, Ward Seven
Doug Wells, Ward Eight

ABSENT:

George Moses, Ward Five

EMPLOYEE SPOTLIGHT PRESENTATION

Mayor Fitch recognized Camron Sellers and Billy Karty, Wastewater Collection employees, for their actions in assisting a young girl on her way to school. He presented a Certificate of Honor to Mr. Sellers. (Mr. Karty was not in attendance).

PRESENTATION OF CERTIFICATES OF APPRECIATION TO 2-6 ADA AND 77TH ARMY BAND

Councilmember Tennis and Mayor Fitch presented Certificates of Appreciation to the 2-6 ADA and the 77th Army Band members for the time they devoted to the 2012 Fishing for Food event.

PRESENTATION TO COUNCILMEMBERS SHOEMATE AND TENIS

Mayor Fitch presented plaques to Councilmembers Bill Shoemate and Michael Tennis for their years of service on the City Council.

AUDIENCE PARTICIPATION:

Rachel Flores, Ward 2, Garden Village, stated she is a Sergeant with the Lawton Police Department. She stated representatives of the Lawton Police Department are in attendance to request assistance in stopping the proposed schedule change within the Lawton Police Department. The change will go in affect on Monday, March 4th and will change four ten hour days to five eight hour days. She stated they have yet to hear from their superiors that there was a need for change. They did hear rumors within the department that vehicle maintenance and overtime costs were too high. If these things were an issue they would have expected their leadership to address it earlier and with them instead of dramatically changing their lives with little notice. If it is not such a big deal, why are there so many of them in attendance to fight against this change and why were they told in such a hasty manner and given very little time to react. Why were they briefly informed by an email instead of telling them face to face. She stated under the proposed schedule change, all of the eight new officers, whom are finishing up their training this week, will now be on the same midnight shift from 11 pm to 7 am with only Tuesdays and Wednesdays off. There is not a lot of supervision working at those times. With the change they will have all of the eight captains working Monday through Friday, with six of them working days. Where is the leadership on the weekends when they need it the most? Under the proposed plan one shift ends right at the time another shift begins, therefore there is no overlap time. Undoubtedly there will be an increase in overtime because calls don't stop coming in because they get off shift in five minutes. They are not here advocating more pay, they are advocating more time. More time to get a second job to make ends meet, more time to spend with family to make up for those midnight and evening shifts, more time to schedule college classes to become a better officer, and more time to give back to the community. They have brought many ideas to the attention of their superiors that would save the department money and would bring in more revenue, but they have yet to be asked what those ideas are. They feel if given the opportunity they can solve their own problems. She requested they stop this change until a thorough review and adequate recommendations can be made by the entire department.

Mayor Fitch stated it is obvious from the presence here tonight that it is a unified voice of the police department. He stated they will discuss this matter in executive session. He stated they have a budget strain to get to the end of the year and they have to address these issues without discontinuing services. They have to find the most logical and economical way in which to address them.

CONSIDER APPROVAL OF MINUTES OF LAWTON CITY COUNCIL REGULAR MEETING OF FEBRUARY 12, 2013.

MOVED by Burk SECOND by Shoemate to approve the minutes of February 12, 2013. AYE: Shoemate, Tennis, Bellino-Hall, Burk, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

CONSENT AGENDA

Wells requested item #12 be discussed separately.

MOVED by Burk SECOND by Tennis to approve the consent agenda with the exception of item #12. AYE: Shoemate, Tennis, Bellino-Hall, Burk, Zarle, Haywood, Wells. NAY: None.
MOTION CARRIED.

1. Consider the following damage claim recommended for denial: Jose and Glenda Gonzalez in the amount of \$1,000.00. Exhibits: Legal Opinion/Recommendation.
2. Consider adopting a resolution approving the compromise settlement and making payment in the workers' compensation claim of James Webb. Exhibits: **Resolution 13-16.**
3. Consider adopting a resolution approving payment on the judgment in the Workers' Compensation case of Asa Hursey in the Workers' Compensation Court, Case No. 2012-06313F. Exhibits: **Resolution 13-17.**
4. Consider approving a sub-lease agreement between El Pache Energy, Inc., and the Lawton Water Authority for the surface use of a 3.0 acre tract of land owned by the City of Lawton in the SW/4 of Section 11, T4N, R11W, I.M. in the vicinity of Lake Ellsworth. Exhibits: Sub-Lease Agreement, Surface Restoration Bond, and Proof of Insurance are on file in the City Clerk's Office.
5. Consider accepting four (4) technology assets provided through federal e-rate funding via the Oklahoma Department of Libraries. Exhibits: None.
6. Consider approving a resolution authorizing and calling for an election in the City of Lawton, State of Oklahoma, for the purpose of setting the dates for the 2013 primary and general municipal elections for designated City Council seats and authorizing the Mayor to issue an election proclamation. Exhibits: **Resolution 13-18** and Election Proclamation.
7. Consider authorizing removal of the scrap materials, mobile homes, sheet metal stalls, and building materials from Fisherman's Cove camping area on Lake Ellsworth in exchange for whatever value the scrap may have to those removing it, and no monetary payment from the City. Exhibits: None.
8. Consider allowing the Parks & Recreation Department to individually Co-sponsor with the Lawton/Fort Sill Chamber of Commerce, Sam's Club, Cystic Fibrosis Foundation and Lawton Armature Softball Association (LASA) a series of softball/baseball tournaments for the year 2013. Exhibits: None.

9. Consider granting non-exclusive public utility easements to Public Service Company of Oklahoma within the abandoned railroad right-of-way between Gore Boulevard and Ferris Avenue and through Elmer Thomas Park, north of Ferris Avenue, for the relocation of overhead electrical transmission facilities in connection with the Lawton Town Center Development, in a customary form agreed to by the City of Lawton. Exhibits: Location Map.
10. Consider approving an agreement with SAIC, Energy, Energy, Environmental, & Infrastructure, LLC for professional engineering design services for the Local Street Reconstruction Project #2012-11. Exhibits: A copy of the agreement is on file in the City Clerk's office.
11. Consider approving an agreement with Cobb Engineering Co. for professional engineering design services for the Intersection Alignment SW 27th & NW 31st Street@ Gore Blvd. Project #2012-9. Exhibits: A copy of the agreement is on file in the City Clerk's office.
12. Consider approving Change Order No. 1 for the Landfill Gas Collection and Control System Project #2011-2 with Landmarc Environmental Systems, LLC. Exhibits: None.

Wells stated this is coming out of the 2005 CIP and he has been trying to find out for a couple of years how much money they have in that CIP fund. He has never gotten an answer. He would think all council members want to know how much money is available. For the next 14 years we have two notes that are going to have to be paid in the amount of \$42,739,149.17. He would think we need to make sure that if we are taking money out of this program there is money there.

Rick Endicott, Finance Director, stated he thought they had given Councilmember Wells that information some time back. He stated staff will get him that information.

Wells suggested they table this until the next meeting.

Endicott stated there is enough money to handle this change order.

Wells stated the change order is very small, it is only \$5,400. He stated he will move for approval if all councilmembers can find out how much money is in that fund.

MOVED by Wells SECOND by Burk to approve Change Order No. 1 for the Landfill Gas Collection and Control System Project #2011-2 with Landmarc Environmental Systems, LLC. AYE: Shoemate, Tennis, Bellino-Hall, Burk, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

13. Consider extending contract (CL12-027) Tire Recapping with Southern Tire Mart of Gainesville, TX. Exhibits: Department Recommendation, Contract Extension Form, Price Sheet.

14. Consider awarding (CL13-026) Water Truck 4,000 Gallon to Total Truck & Trailer of Norman, OK. Exhibits: Department recommendation, abstract of bids, price sheet.
15. Consider extending contract (CL12-029) Water Line Fittings & Valves Item 2-23 with HD Supply Waterworks, Formally Water Products of Oklahoma of Owasso, OK. Exhibits: Department Recommendation, Contract Extension Form, Price Sheet.
16. Consider approving contract extension for one (1) month (RFPCL10-020) HDW/SFW Support Agreement to Atlantic Tech Services of Richfield, OH. Exhibits: Department Recommendation, Contract Extension Form, Price Sheet.
17. Consider approving appointments to boards and commissions. Exhibits: None.
18. Consider approval of payroll for the period of February 4 - 17, 2013.

NEW BUSINESS ITEMS:

19. Hold a public hearing and consider an ordinance amending Section 18-5-8-580 of the City Code to add indoor archery range and archery equipment sales as a permitted use in the C-1 Local Commercial District. Exhibits: Ordinance No. 13-__.

Richard Rogalski, Community Services Director, stated recently there was a request to rezone a tract of land for an indoor archery range and retail store. The current code does not specifically list an indoor archery range as a permitted use in any zoning district. During the public hearing for the request, the City Planning Commission directed staff to prepare an amendment to the city code to allow an indoor archery range and archery equipment sales as a permitted use in C-1. The City Council approved C-1 zoning for the tract and concurred with the CPC that an amendment to the city code which would allow an indoor archery range and archery equipment sales as a permitted use in C-1 should be prepared. The proposed ordinance would add “archery range (indoor) and archery equipment sales” as a permitted use in the C-1 district. C-1 zoning would allow the retail sales of other items which are not otherwise included in less restrictive zoning districts. Other sporting goods which is not a permitted use in C-1 zone would not be allowed, which would include fire arms and ammunition. This is a limited opening for indoor archery range and archery equipment sales. On February 14, 2013, the CPC held a public hearing on this proposed amendment to the city code and recommended approval.

Burk stated that the owner did sell other things.

Rogalski stated the archery range did sell ammunition and fire arms. The CPC felt that those items were not something they were willing to change. They felt those kinds of items should be under a C-4 use. They approved the archery range and archery range equipment.

Wells questioned if the owner agreed to those changes.

Rogalski stated the operator did want to be able to sell those items, but the CPC was also very clear that those items should not be included.

Burk stated they are sold across the street at Walmart.

Wells stated Walmart is C-4.

Burk stated he does not see limiting his business ability as long as he meets all the current requirements to be able to sell firearms. He had the license to do that at his old location.

Zarle questioned why they took the firearm sales away.

Rogalski stated it is around neighborhoods and there was a school behind them. When you add firearm sales the intensity grew to the C-4 level and the CPC felt that C-4 was not appropriate for that location and it was beyond their comfort level.

Burk questioned if the bank next door was zoned C-4.

Rogalski stated it is C-1. Laugh Out Loud is C-4.

Burk stated all that area will be commercial. This is an entrepreneur trying to make a living in our community. It would be different if he was inside the neighborhood or directly across from a school.

Wells stated the whole argument is C-1 versus C-4.

Burk questioned how he would allow the sale in the motion.

Rogalski stated he would include, in the motion, to include archery range, archery related sales in the C-1 zone but also to allow sales of firearms and ammunition along with the archery related equipment.

Jensen stated we would be adding language to a code section that requires a public hearing. When you add things to the code, that could present a problem. They could approve this version tonight and then bring it back later to add these items. There may have been people who would have attended the public hearing if we were talking about firearms and ammunition.

Haywood stated they told the people C-1, not C-4.

Rogalski stated they are still talking about C-1 zone, this would be a significant change to add this use to that zoning district. They probably should re-notice this.

Jensen stated they could approve this version tonight to help him get started.

PUBLIC HEARING OPENED. No one appeared to speak and the public hearing was closed.

MOVED by Zarle, SECOND by Haywood to adopt **Ordinance 13-09**, waive the reading of the ordinance, read the title only. AYE: Shoemate, Tennis, Bellino-Hall, Burk, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED

(Title read by City Attorney)

Ordinance 13-09

An ordinance related to zoning amending section 18-5-8-580 of Chapter 18, Lawton City Code, 2005, adding indoor archery range and the sale of archery equipment as a permitted use in C-1 Local Commercial District; and providing for severability.

20. Consider an ordinance pertaining to nuisances and health amending Sections 15-4-401 and 402, Article 15-4, Chapter 15, Lawton City Code, 2005, by removing the definition of “city-owned parks and playgrounds” and removing city-owned parks and playgrounds from the areas designated under city code as non-smoking, providing for severability and declaring an effective date. Exhibits: Ordinance No. 13-___, Attorney General Opinion 2013-2.

Tim Wilson, Deputy City Attorney, stated the proposed ordinance removes the smoking ban for city parks that was created in 2010-2011 when this ordinance was last amended. This movement is coming from a result of a February 5, 2013 Attorney General opinion which states that municipal ordinances that are more strict with regards to their smoking laws are not lawful and enforcing those would be improper. This ordinance will stay in line with the Attorney General’s opinion. When they changed this to ban smoking in parks, there was an Attorney General’s opinion that was done on August 16, 2010, it was not a formal opinion, it was basically a letter ruling that said it was okay. Staff had some concerns about going ahead with the ban at that time, but because of the Attorney General’s letter, they begrudgingly went ahead. The change in the Attorney General’s position earlier this month is what is prompting this ordinance to be brought back.

Mayor Fitch stated we passed an ordinance that disallows smoking in parks and public areas under control of the City of Lawton. Now there is another Attorney General opinion that says that is not in accordance with state statute. He stated the general consensus is that they would like to see a smoking ban on public parks. If we do not repeal this we will be in violation of state law. The house subcommittee that was hearing this did not pass it out of house committee because they thought that businesses had spent a lot of money on ventilation systems to have a smoke room within their establishments. The senate version of this addressed those needs and protects the businessman’s investment. It came out of the senate committee and now it will be heard on the senate floor to allow the cities to have higher standards in regard to smoking than the state statute allows. It will be heard on the floor next week and then it will go to the house. He stated the house committee that had this bill in committee is satisfied with the language in the senate version as far as protecting the businessman. We have a legislature that will deal with this by the end of session. If it is turned down at the state level, we would have to act and repeal this ordinance we have. He is for keeping it in tact, but we have to be in compliance with state law. We are being forced to repeal this and then we will bring it back as soon as the legislature decides what they are going to do in this area. Governor Fallin is asking for a petition vote in the general election to have an ordinance that supersedes the state ordinance. When we are out of compliance with state statute, the City of Lawton is vulnerable to lawsuits. He stated there are representatives from the hospital and this is their agenda and he supports them 100%, but he also has to support the city being in compliance with state statute.

Wells stated he was asked why charter cities have to follow the rules of the legislature. He requested the City Attorney explain this.

Jensen stated an Oklahoma Supreme Court opinion from 2004 says that the state constitution and general laws upon a subject of statewide concern has control over conflicting city charter provisions. A city charter must give way to matters of statewide interest. Then you have to decide what is a matter of local concern or matter of statewide concern. There are plenty of cases that say that firearms and tobacco are a matter of statewide concern. We have our hands tied until they change the law.

Shoemate stated we had all these outstanding young people who went around and got this thing passed because they believe in people not smoking. In the end it hits us all in the pocketbook. He suggested they table this until the next meeting and get more information instead of voting on it and having to bring it back up.

Burk stated he and Bellino-Hall worked very hard on this and there was a lot of concern when they passed this before. There comes a time when you have to stand up for what is right. They may not be able to enforce it right now, but his personal opinion is that they not get rid of it.

Bellino-Hall stated this is all about money. The tobacco companies are throwing money at anyone they can to keep these laws on the books of preemption. We are one of the two states in the country that have these preemption laws. She looks at this every day. They need to stand up and be vulnerable and see how strong we are. She requested that the council not rescind this ordinance and she would like staff to make an ordinance that we have no tobacco in any place that is a city owned property.

Tenis questioned the consequences if they do not rescind the ordinance.

Jensen stated you have two options, you either leave it on the books and don't enforce it, or you repeal it. If you leave it on the books he would hope they would not enforce it by accident because we don't want to worry about an enforcement issue that may result in a custody issue that may result in a potential claim. As long as they do not enforce it, it is simply dormant.

Wells questioned if the council is going to pay the \$125,000 claim when they don't do this and they are sued?

Mayor Fitch stated it is his understanding that they have never issued a citation for this to this day.

Bellino-Hall stated what is \$125,000 versus the 5,000 lives we lost last year in Oklahoma from cancer related to cigarette smoking.

Zarle stated he voted to not smoke in the park and he abides by the law. He stated he has to support this as the Attorney General's law.

Mayor Fitch stated if the motion is made to approve the ordinance it will be repealed, if a substitute motion is made not to repeal it we would vote on that first.

MOVED by Tennis, SECOND by Zarle to adopt **Ordinance 13-10**, waive the reading of the ordinance, read the title only and declaring an effective date.

SUBSTITUTE MOTION by Bellino-Hall, SECOND by Burk to not approve the ordinance and direct staff to come up with a new ordinance that states no tobacco products in any of the city owned properties. AYE: Shoemate, Bellino-Hall, Burk. NAY: Tennis, Zarle, Haywood, Wells. MOTION FAILED.

VOTE ON ORIGINAL MOTION: AYE: Tennis, Zarle, Haywood, Wells. NAY: Shoemate, Bellino-Hall, Burk. MOTION FAILED (Did not receive five affirmative votes).

Mayor Fitch stated right now it is a dead issue and is still on the books.

Haywood questioned if the police can write tickets.

Jensen stated if they write tickets now they would not be valid tickets and would not be enforced.

Wells stated they need to say that not only will the police not enforce it, but also citizens cannot enforce it.

ADDENDUM:

1. Consider and take action with respect to a resolution relating to City of Lawton general obligation bonds for solid waste management system improvements, animal welfare facilities and fire station improvements; fixing the amount of bonds to be sold, providing for the maturity of the bonds, fixing the time and place the bonds are to be sold and authorizing the Clerk to give notice of said sale as required by law, designating paying agent and authorizing paying agent agreement; ratifying a legal services agreement and a financial advisor services agreement with respect to the issuance of the bonds; deeming preliminary official statement "near final" and authorizing distribution; and containing other provisions relating thereto. Exhibits: Resolution 2013-____, Notice of Sale of Bonds and GO Bond Issue Levy Projection Schedule.

Endicott stated a few weeks ago staff brought an item to council to approve moving forward with selling GO bonds. John Wolfe with Municipal Finance Services is here to discuss this issue with the council.

John Wolfe, Municipal Finance Services, stated this resolution fixes the time and amount of the GO bonds at \$3.3 million with a bond sale at 11:00 a.m. on March 26, 2013. He stated they will provide bid packets to potential bidders and the City Clerk will give notice of the sale as required by state law.

Wells stated on the schedule the interest rates increase. He questioned if this was unique to bonds.

Mr. Wolfe stated the longer you go out, the higher the interest rate. You will pay a higher interest rate for a longer term. In Oklahoma, GO bonds are sold in separate maturities and the estimated interest rates, based on the timing of the sale, will be increasing over the period of time. They believe the average interest rate of averaging all of those rates over the ten years will be somewhere between 1 ½ % and 2%.

Wells stated he just asked because sometimes we will do a 14, 15 or 20 year sales tax issue and we will get the same interest rates for the whole period.

Mr. Wolfe stated typically when they look at putting out a utility type transaction or revenue note, the banks that typically bid on those type transactions, bid a term rate over a period of time. This is a public offering, so when an underwriter, which could be a bank, bids on the transaction, that underwriter may sell those nine different maturities to different entities. Each one of those series of bonds are grouped and sold at a rate based on that term based on what the market is. We will have one underwriter that will be the lowest and best bidder and that underwriter will typically sell those bonds to other parties and that is what they based their interest rate bid on.

Mayor Fitch stated basically they are approving to move forward and when they come back they will approve the sale of bonds at a later date.

MOVED by Wells, SECOND by Zarle to approve **Resolution 13-19**. AYE: Shoemate, Tennis, Bellino-Hall, Burk, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER

Kim Shahan, Parks and Recreation Director, introduced Keith Nitkze, the new Parks and Grounds Supervisor.

The Mayor and Council convened in executive session at 7:18 p.m. and reconvened in regular, open session at 9:00 p.m. Roll call reflected all members present.

BUSINESS ITEMS: EXECUTIVE SESSION ITEMS

21. Pursuant to Section 307B.2, Title 25, Oklahoma Statutes, consider convening in executive session to discuss negotiations for a Collective Bargaining Agreement for FY 2013-2014 between the Police Union, IUPA Local 24, and the City of Lawton, and, if necessary, take appropriate action in open session. Exhibits: None.

Jensen read the title of item 21.

MOVED by Tennis, SECOND by Wells to appoint Tim Wilson, Jim Russell, James Apple as the City's negotiating team for FY 2013-2014 negotiations with IUPA Local 24 and further move to

designate Kelea Fisher and Sherry Anderson and alternate members. AYE: Shoemate, Tennis, Bellino-Hall, Burk, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED

22. Pursuant to Section 307(B)(3), Title 25, Oklahoma Statutes, consider convening in executive session to discuss the proposed sale of approximately 50 ½ acres, collectively or by parcel, of City-owned real property in the vicinity of NW 67th Street and Rogers Lane, as authorized by Ordinance No. 11-07, and take appropriate action in open session. Exhibits: None.

Jensen read the title of item 22. No action was taken.

23. Pursuant to Section 307B.1, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the appointment of an applicant to the position of City Manager and take appropriate action in open session as deemed necessary. Exhibits: None.

Mayor Fitch read the title of item 23.

MOVED by Wells, SECOND by Shoemate to appoint Bryan Long as permanent City Manager at a salary of \$127,000 with no car allowance and sick leave and vacation according to general employees contract with caps on certain things with payouts at the end of each year. AYE: Shoemate, Tennis, Bellino-Hall, Burk, Zarle, Haywood, Wells, Mayor Fitch. NAY: None. MOTION CARRIED

There being no further business to consider, the meeting adjourned at 9:03 p.m. upon motion, second and roll call vote.

FRED L. FITCH, MAYOR

ATTEST:

TRACI HUSHBECK, CITY CLERK